No. 82-6830

SEP 26 1983
ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1983

LARRY DEAN SMITH,

Petitioner,

-vs-

THE STATE OF OKLAHOMA,

Respondent.

MEMORANDUM IN RESPONSE TO PETITIONER'S
PETITION FOR WRIT OF CERTIORARI

In his Petition for Writ of Certiorari filed with this Court, the Petitioner, in his first proposition, contends that the evidence is insufficient to demonstrate that he either participated in the killing or intended the victim's death. (Petition, p. 15, 19-20).

The transcript reveals that the sole evidence which linked the Petitioner to the death of the victim is contained in a statement given by the Petitioner to Sheriff Ingram. The crucial part of this statement appears on pages 137-140 of the trial transcript. According to Sheriff Ingram, the Petitioner advised him that, when he started walking away from the victim's pickup, he observed his co-defendant Goforth, place "some paper or something" under the front seat of the pickup (Tr. 139). Nowhere is it stated that the Petitioner observed his co-defendant set fire to the pickup.

In view of the foregoing, the State concedes that it cannot be said that the Petitioner "contemplated that life would be taken." Enmund v. Florida, ___ U.S. ___, 51 U.S.L.W. 5087, 5092 (U.S. July 2, 1982).

Respectfully submitted,

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On this _____ day of _____, copy of the foregoing was mailed, postage prepaid, to:

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